IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 7 OF 2005.

Mr. Altaf Sayed,
s/o Mr. Babul Sayed,
age 25 years,
resident of House No. 800,
Housing Board, Gogol,
Margao, Goa. .... Applicant.

Versus

S T A T E
(Through P.I. Attached to
Maina Curtorim Police Station)
Curtorim, Goa. .... Respondent.

Shri Menino Teles, Advocate for the Applicant.

Ms. W. Coutinho, Addl. Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 3rd February, 2005.

O R D E R:

This application for bail has been filed by the accused in Crime No. 87/04 of Maina Curtorim Police Station, after bail applications filed by him were rejected thrice, by the Children's Court.

2. The accused was arrested on 14.11.04 in the said crime which has been

registered against him under Sections 342 and 376 of I.P.C. and Section 8 (3) of the Goa Children's Act, 2003. Since then, the accused is in custody.

3. Charge-sheet has been filed against the accused on 19.1.05.

4. The allegation against the accused is that he took the victim who is about 17 years of age, under the pretext of meeting a customer who needed a loan, as the victim was working for a Finance Company, to Glossy Guest House at St. Jose de Areal on or about 13.11.04 and then had forcible sexual intercourse with her. The accused is stated to be 25 years of age.

5. The bail application has been rejected by the learned Children's Court lastly on 14.1.05 on the ground that the offences committed by the accused are serious in nature and that it would not be in the interest of justice to release the accused on bail at least till such time the statement of the victim is recorded before the Court.

6. There is no doubt that the seriousness of the offence is the foremost ground to be considered while considering the application for bail filed by an accused. However, the circumstances in which the crime came to be committed is also relevant to be noted. In the case at hand, the victim was admittedly above 16 years of age. The statement recorded of the victim and her supplementary statement do not show that the case

against the accused is as serious as it is sought to be made out. In the reply filed, opposing the application for bail, it has been stated that on 14.11.04 at 00.15 hrs. the accused went to the said guest house along with the victim by posing themselves as husband and wife and stayed there for one night in a room of his guest house. These facts ought to have been considered by the learned Children's Court whilst considering the seriousness of the offence committed by the accused. As stated by the Supreme Court in the case of **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P. (A.I.R. 1978 S.C. 429)**, in matters of bail – one awareness of matters or relevance is assured – the briefer the better, and prolixity may be fraught with unwitting injury to the prosecution or the defence. The seriousness of the offence allegedly committed by the accused was certainly not covered by Section 437(1)(i) of the Code of Criminal Procedure, 1973 and being so, the accused ought to have been admitted to bail.

7. There are also other factors which are required to be noted whilst considering a bail application. Although the basic rule is bail and not jail and bail is to be granted wherever practicable, the Courts are also required to find out whether there is reasonable likelihood of the accused fleeing from justice or absconding or polluting the same or of tampering with evidence, etc. The learned Children's Court has not spelt out any apprehension that the accused was likely to interfere with the

victim or any of the prosecution witnesses, but has remained satisfied by observing that it would be in the interest of justice to release the accused on bail till such time the statement of the victim is recorded before that Court. The learned Children's Court has not specified as to when the said statement is likely to be recorded, whether it would take months or for that matter years, before the same could be recorded and one does not know for how long the accused would remain in custody for the purpose of recording the said statement. Before this Court, some antecedents of the accused have been mentioned in the reply filed with a view to deny bail to the accused. Although it has been traditional as well as rational to inquire into the antecedents of an accused who is applying for bail to find out whether he has a bad record, a record which would suggest that he is likely to commit serious offences while on bail, the antecedents mentioned in the reply are not of that character. In fact there was not even a whisper in the orders of the learned Children's Court that the accused was likely to interfere, if released on bail, either with the victim or any of the prosecution witnesses. From the said reply it appears that the accused was involved in the year 1998 in six crimes, all under S.379 r/w 34 I.P.C., but it has been stated that the accused was acquitted in all the said crimes and there is no dispute raised about the same. It has also been stated in the said reply that the accused was convicted in Margao Town Police Station Crime No.218/2000 under S.324 r/w S.34 I.P.C.

And here again it has been stated that the accused was ordered to undergo imprisonment for one day only which the accused has undergone and this has also not been disputed. It has also been stated in the said reply that after the learned Children's Court rejected the bail application of the accused, for the second time, the brother of the accused by name Alam Shaikh along with his associate went to the victim's Uncle's house where the victim was residing and assaulted her with kicks, fist blows, etc. and threatened her to withdraw the complaint of rape filed against the accused and that in that regard Crime No.93/04 has been registered. However, when the Investigation Officer through the learned Addl. P.P. was asked to produce the medical report of examination of the said victim, it has been submitted that the medical report does not show any external injuries on the said victim consequent to the said assault.

8. It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. Considering the totality of the facts stated by the victim in her statement, in her supplementary statement and what has been stated in the reply filed, to which reference has been made hereinabove, in my view, this is a fit case to admit the accused to bail but with condition so as to ensure that the accused in no manner interferes either with the victim or any of the prosecution witnesses.

9. The accused, therefore, shall be released on bail upon execution of a Bond of Rs.20,000/- with one surety in the like amount to the satisfaction of the Presiding Officer of the Children's Court, Margao, with a further condition that the accused shall not interfere directly or indirectly with the victim or other prosecution witnesses.

N. A. BRITTO, J.

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